IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2903 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NASIRKHAN @ KHANNA SIKANDARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2903 of 2002

MR MM TIRMIZI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 5-12-2001 passed by the Police Commissioner, Ahmedabad City and he has been

branded as a bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Though various contentions were raised in the petition, learned advocate for the petitioner has restricted his argument on the point of non-supply of legible copies. Challenging the order of detention, it is contended by Mr.M.M.Tirmizi, learned advocate for the petitioner that the detaining authority has not supplied legible copies of certain documents and statements which were relied upon by the detaining authority in passing the order of detention and though he has demanded by way of representation dated 17-2-2002 which was sent by Regd. Post A/D, legible copies were not supplied and, therefore, the petitioner could not make an effective representation against the order of detention and hence, the order of detention may be quashed on this ground alone. He has placed reliance on the decision of this Court in the case of Pokhrajbhai Sohanbhai Chandel Vs. District Magistrate, Surat & Ors., reported in 1991(2) G.L.R. 753.

4. I have verified the copies of the documents which were supplied to the petitioner along with the order of detention. It is true that some of the copies are not legible and learned AGP has fairly admitted the same. In view of the aforesaid decision of this High Court, I am of the opinion that the detaining authority has failed to supply legible copies of the relevant documents to the detenu for making an effective representation which has infringed the detenu's right under Article 22(5) of the Constitution of India. Under the circumstances, continued detention of the detenu is bad and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 5-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Nasirkhan Khanna Sikandarkhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Learned advocate for the petitioner states at the bar that detenu will stay away from Ahmedabad for a period of fifteen days from the date of release. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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